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MAR 26 2001

FCC MAIL ROOM

March 23, 2001

Ms. Magalie Roman-Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: CC Docket No. 96-45, DA 01-278

In the Matter of the Petition of Western Wireless Corporation for Designation as
an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South
Dakota

Dear Ms. Roman-Salas:

Enclosed please find one original and four copies of the Reply Comments of the South Dakota Independent Telephone Coalition, Inc. in reference to CC Docket No. 96-45 in response to Public Notice DA 01-278. In accordance with the instructions in the Public Notice, three copies have also been sent to Sheryl Todd and an electronic disk copy has been sent to the Commission's copy contractor, International Transcription Service and copies have been sent to all other persons on the service list.

Thank you for your assistance.

Sincerely,



Richard D. Coit
Executive Director and
General Counsel

Attachments

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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MAR 26 2001

In the Matter of)	FCC MAIL ROOM
)	
WESTERN WIRELESS CORPORATION)	CC Docket No. 96-45
)	DA 01-278
Petition for Designation as an Eligible)	
Telecommunications Carrier for the)	
Pine Ridge Reservation in South Dakota)	

**REPLY COMMENTS OF THE
SOUTH DAKOTA INDEPENDENT
TELEPHONE COALITION**

Richard D. Coit
General Counsel for
South Dakota Independent
Telephone Coalition

March 23, 2001

The South Dakota Independent Telephone Coalition, Inc. (“SDITC”) submits these reply comments in response to the Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) on February 2, 2001 (DA 01-278). SDITC filed initial comments in this proceeding, in response to the same public notice, on March 12, 2001.

The purpose of these reply comments is to express our specific concurrence in the comments filed herein by Golden West Telecommunications Cooperative, Inc., Fort Randall Telephone Company d/b/a Mount Rushmore Telephone Company, Great Plains Communications, Inc. and the National Telephone Cooperative Association. The comments presented by these other parties are consistent with the SDITC arguments and offer additional support for immediately dismissing the petition for ETC designation filed by Western Wireless Corporation (“WWC”). As noted in the comments of these other parties, the instant petition for designation must be dismissed because of the still pending state ETC designation proceedings and also because the request for designation before this Commission fails to correspond with the existing rural telephone company service areas. In addition, it is clear from these other comments that it would not serve the public interest to grant eligible telecommunications carrier designation to WWC in the rural service areas that extend to the Pine Ridge Reservation.

I. The process for FCC ETC designation under 47 U.S.C. § 214(e)(6) is not available to WWC given the already initiated state proceeding.

As pointed out in SDITC’s initial comments and in the comments filed by various other parties, under this Commission’s Twelfth Report and Order, no filing for ETC designation under 47 U.S.C. § is permitted if a proceeding for such designation has already been initiated at the state level. Since the filing of these earlier comments, the South Dakota Supreme Court has issued its decision regarding WWC’s petition for statewide ETC designation filed at the state

level.¹ The decision issued by the South Dakota Supreme Court does not, however, affect the earlier arguments and call for any different disposition of this proceeding. The Court issued a decision affirming the lower court's determination that the South Dakota Public Utilities Commission ("SDPUC") had erred in its interpretation of the Section 214(e) provisions, but the matter has still been remanded back to the SDPUC for a determination on the public interest as applicable to rural telephone company service areas.

Accordingly, the South Dakota Supreme Court's decision does not change the fact that a proceeding for statewide ETC designation initiated by Western Wireless remains pending in the state jurisdiction. The SDPUC must yet make a determination as to whether it is in the public interest to designate WWC as a second ETC in rural service areas throughout the State. Until that determination is made and WWC's state petition has been completely addressed, the requirement established by the Commission in its Twelfth Report and Order that no dual proceeding should be permitted before the FCC under Section 214(e)(6) still stands and demands a dismissal of the instant WWC petition.

II. Designating WWC as an additional ETC in the affected rural service areas would not be in the "public interest" as required by the provisions of Section 214(e)(2).

Golden West, Fort Randall and Great Plains Communications have offered substantial factual information in their comments showing why it would not be in the public interest to grant WWC designation as a competitive ETC in their high cost, rural service areas. These comments indicate that the WWC fixed wireless offering will not result in lower rates or improved services for Pine Ridge area customers and further show how critical universal service funding is to each of the rural telephone company's facility investment plans.

¹ *In re GCC License Corp.*, 2001 SD 32, Opinion filed Mar. 14, 2001.

While it is obvious from the information presented by each of the rural telephone companies that continued sufficient universal service funding is indispensable to their provisioning of both affordable basic and advanced telecommunications services, WWC has made absolutely no showing as to why ETC designation is necessary for the provisioning of its service. As Great Plains Communications notes in its comments, the fact that the incumbent LECs have a high cost of service which requires support in order to maintain reasonable local rates says nothing about the costs of providing the very different, and more limited service which WWC proposes. In order to make a fair determination on the public interest question, SDITC believes this Commission must have some information allowing it to make a comparison between WWC's actual service costs and the universal service funding it would receive per line if granted ETC designation. WWC has provided no such information.

As SDITC points out in its initial comments, the purpose of the federal universal service support mechanisms is not to support and encourage inefficient competition in market areas that would not attract competitive entry by multiple carriers in the absence of universal service support mechanisms. Rather, the purpose of universal service funding is to support service where costs exceed affordable prices. Nothing in the federal law regarding either competition or universal service is intended to support endeavors by competitive LECs to convert or distort the existing high cost support mechanism into an affirmative action program for inducing artificial or inefficient competition.²

This Commission in its first Report and Order on Universal Service (FCC97-157) discussed the potential for asymmetry between a competitive carrier's actual costs of providing service and what the competitive carrier may be eligible to receive in federal universal service

² See Rural Telephone Company Group Brief After Continued Hearing filed before the North Dakota Public Service Commission, *Western Wireless Corporation Designated Eligible Telecommunications Carrier Application*, Case no. PU-1564-98-428.

support. The Commission agreed with concerns expressed by ILECs over such possibility and indicated that it “should limit the ability of competitors to make decisions to enter local markets based on artificial economic incentives created under the modified existing [universal service support] mechanism.” The Commission further noted its expectation that state commissions, in the process of making eligibility determinations, would play an important role in minimizing the risk of anticompetitive behavior . . . and specifically commented that state commissions may consider whether a competitive carrier seeking ETC designation would be in a position to “exploit unjustly” the asymmetry between their cost of providing service and the level of universal service support.

If the Commission in this process decides that it should accept WWC’s filing and proceeds toward a determination on the public interest issue, it should for the same reasons expressed in its first Report and Order on Universal Service be concerned with the potential for WWC to exploit or “arbitrage” the existing high cost support mechanism. The Commission has advised state commissions in reviewing ETC applications to be alert to this potential for abuse. Its review under Section 214(e)(6) should not be blind to the same concerns. As part of any public interest review, the Commission should assure itself that WWC, if granted ETC status, would not receive any unearned windfall or gain any unfair competitive advantage over the existing carriers.

III. Western Wireless has compromised the integrity of the Commission’s processes.

SDITC also concurs in all respects with the comments of Golden West noting that WWC has compromised the integrity of this process through earlier inviting FCC participation in the ceremony surrounding the Tate Woglaka Service Agreement. As Golden West states, “Western Wireless knew, or should have known, that it would be filing the present Petition within the next

month, and that it would be employing the Agreement as the primary basis for the ETC designation requested in the Petition.” By inviting Commissioner participation in the ceremony surrounding the Agreement between WWC and the Oglala Sioux Tribe and in seeking Commissioner signatures on a proclamation relating to the Agreement, WWC attempted to prematurely shape or influence the current process. Such action by WWC was inappropriate and gives further reason for dismissing the instant petition and allowing the matter to be addressed instead at the state level.

IV. Conclusion.

Based on the arguments and authorities set forth in these comments and in SDITC’s initial comments herein, SDITC urges the Commission to dismiss the WWC petition for designation as an ETC. The petition is not rightly before the Commission for any decision pursuant to 47 U.S.C. § 214(e)(6) and WWC’s claims that it is currently meeting the ETC service obligations and that its designation would be in the public interest are unsupported.

Dated this 23rd day of March, 2001.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a horizontal line.

Richard D. Coit
General Counsel for SDITC
(605) 224-7629

CERTIFICATE OF SERVICE

I hereby certify that an original and four (4) copies of the foregoing document were sent by Federal Express on the 23rd day of March, 2001 to:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554


Three copies were sent by First Class Mail via U.S. Postal Service to:

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
445 Twelfth Street SW Room 5B540
Washington, DC 20554

An electronic disk copy was sent by First Class Mail via U.S. Postal Service to:

FCC Copy Contractor
International Transcription Service
445 Twelfth Street SW Room 5B540
Washington, DC 20554

One copy was sent by First Class Mail via U.S. Postal Service to the persons on the attached service list.

A handwritten signature in black ink, appearing to read 'Richard D. Coit', is written over a horizontal line.

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